

**AGREEMENT, AND COVENANT NOT TO SUE FOR THE PROPERTIES AT
00-940 EL CAMINO AVE., 2740 BOXWOOD STREET, AND 2308-2320
EVERGREEN STREET, SACRAMENTO, CALIFORNIA**

I. PURPOSE

This Agreement and Covenant Not to Sue (“Agreement”) is provided in response to a request submitted by Signature Properties, Inc., a California corporation (“Signature”), to the Central Valley Regional Water Quality Control Board (“Water Board”) concerning the approximately 5.38 acres presently located at 900-940 El Camino Avenue, 2740 Boxwood Street and 2308-2320 Evergreen Street in the City of Sacramento, County of Sacramento, California (collectively, the “Properties”). Signature intends to acquire and redevelop the Properties for residential use. However, pollution and/or contamination may exist at or under the Properties due to wastes formerly discharged at the Properties or due to wastes that were discharged off the Properties that have, or may in the future, migrate onto or under the Properties (hereafter, collectively, pollution).

Signature has requested a commitment from the Water Board that Signature not be subject to liability related to, or arising from, the pollution at the Properties. In order to secure the Water Board’s agreement to Signature’s request, Signature proposes to take certain actions, as more fully described below, to assure that the waste is removed from the Properties or does not otherwise pose a threat to future residents at the Properties or the environment.

II. DEFINITIONS

1. “Properties”: Figures showing the location of the Properties are attached hereto and incorporated by reference as Attachment A. Legal descriptions of the Properties are attached hereto and incorporated by reference as “Attachment B. The term “El Camino property” refers to the portion of the Properties located at 900-940 El Camino Avenue and 2740 Boxwood Street. The term “Evergreen property” refers to the portion of the Properties located at 2308-2320 Evergreen Street.
2. “Signature”: For the purposes of Paragraphs IV.2 through IV.4 of this Agreement, including the Covenant Not To Sue provided herein, “Signature” includes Signature and its affiliated entities, subsequent purchasers, owners, tenants, owners associations, tenants’ associations, lenders, and any occupants of the Properties, as well as all of their respective directors, officers, shareholders, managers, members, employees, partners, affiliates, agents, contractors, and its successors, and assigns.
3. “Known Conditions”: For purposes of this Agreement, “Known Conditions” or “Known Condition” means all conditions of pollution in, at, under, or originating from the Properties, or any portion thereof, and all conditions of pollution originating from adjacent and nearby properties migrating onto or off of the Properties, or any portion thereof, that were known to the Water Board prior to the Effective Date, including, without limitation, the presence of chlorinated

solvents and volatile organic chemicals (VOCs) in groundwater at and in the vicinity of the Properties. The term “known to the Water Board” means all information regarding the conditions of pollution in, at, under, or originating from the Properties, or any portion thereof, and all conditions of pollution originating from adjacent and nearby properties migrating onto or off of the Properties, or any portion thereof, that was disclosed to the Water Board or is reasonably discernible from the reports, investigations, work plans, or any other information submitted to the Water Board prior to the Effective Date of this Agreement, including each of the reports described below.

III. FINDINGS OF FACT

This Agreement is based on the findings made by the Water Board in Resolution No. R5-2006-0123, upon the following findings by Water Board staff and upon representations made by Signature and its consultants:

1. The Properties are within the jurisdiction of the Water Board due to the Known Conditions. The Water Board enters into this Agreement pursuant to California Water Code Sections 13000, *et seq.* The Water Board has authority to release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against current owners and prospective purchasers of environmentally impacted properties, where the agreement is sufficiently in the public interest.
2. The El Camino property is currently vacant. The northern portion of the El Camino property is paved with asphalt and was apparently used for vehicle sales activities. The southern portion of the El Camino property consists of a gravel lot with overgrown vegetation. From the mid 1950s to 1960s, the southern portion of the El Camino property was occupied by a lumber company and market. The Evergreen property is also currently vacant. It is covered by vegetation. Two residences existed on the Evergreen property during the 1960s and 1970s. No structures have been on the Evergreen property since that time. A storm water drainage ditch traverses the Evergreen property.
3. Signature plans to construct approximately 80 units of single family housing on the Properties. Signature’s plans to redevelop the Properties represent a productive use of underutilized property that will benefit the public and the community. Estimated benefits to the community from the proposed redevelopment project include infilling, brownfields redevelopment, use of certain existing infrastructure, creation of new infrastructure, infill housing, new jobs, and additional real estate, municipal and sales taxes and fees. The Sacramento Housing and Redevelopment Agency has submitted a letter to Water Board staff in support of the project.
4. As detailed in Paragraphs 5 through 9 below, several Phase I Environmental Site Assessments, subsurface investigations, and groundwater investigations have been conducted at the Properties. In general, total petroleum hydrocarbons as

gasoline (TPHg) and associated benzene, toluene, ethyl benzene, and xylenes (BTEX) are present in soil, groundwater and soil gas at the El Camino property. Residual metals (primarily lead) and total petroleum hydrocarbons as motor oil (TPHmo) are present in soils at the El Camino property at multiple locations and depths. Perchloroethene was detected in groundwater along the western portion of the Evergreen property and is likely from off-site, although not specifically identified, sources. Low concentrations of trichloroethene have also been found in groundwater.

5. The Evergreen and El Camino properties have been the subject of two Phase I Environmental Site Assessment Reports (Phase I Reports). The first Phase I Report was prepared by ADR Environmental Group on June 30, 2005.¹ The second Phase I Report was prepared by ENGEO Incorporated (ENGEO) on December 29, 2005.² The Phase I Reports concluded that neither the Evergreen nor the El Camino properties were used for activities likely to have resulted in the discharge of chemicals to soil or shallow groundwater.
6. A soil vapor study of the Evergreen property prepared by ENGEO in October 2005 suggests that VOCs may be present in shallow groundwater beneath the property.³ None of the concentrations detected, however, exceed California Human Health Screening Levels (CHHSLs) for vapor intrusion or indoor air quality. The compounds identified by ENGEO at and beneath the Evergreen property are presented in Table 1, attached, along with the applicable CHHSLs.
7. Under the oversight of Regional Board staff, Signature performed additional Phase II investigations of the Properties, including additional soil vapor sampling. A June 2006 report from BSK Associates (BSK) present the results of the additional soil vapor investigation and surface soil investigation at the Properties.⁴ The groundwater grab sample collected from the El Camino property did not contain VOCs above reportable detection limits. Tables 2 and 3, attached, summarize the remaining laboratory results from BSK's investigation.
8. Organochlorine pesticides were detected in a surface sample collected from the northern portion of the drainage ditch on the Evergreen property. This data, presented in Table 3, indicates the likely source of the pesticides is stormwater runoff from properties to the north of the Evergreen property.

¹ *Phase I Environmental Site Assessment for the Undeveloped Parcel, 2308-2320 Evergreen Street, Sacramento, California*, ADR Environmental Group, Inc., June 30, 2005.

² *Phase One Environmental Site Assessment, 900-940 El Camino Avenue, 2740 Boxwood Street, and 2308-2320 Evergreen Street Properties, Sacramento, California*, ENGEO, Incorporated, December 29, 2005.

³ *Evergreen Property, 2308-2320 Evergreen Street Properties, Sacramento, California, Soil Gas Survey Report*, ENGEO, Incorporated, October 20, 2005.

⁴ *Report of Findings for Sampling at 900-940 El Camino Avenue, 2740 Boxwood Street, and 2308-2320 Evergreen Street Properties, Sacramento, California*, BSK Associates, June 27, 2006.

9. VOCs were detected in soil vapor samples at levels that do not present a threat to human health or the environment. Chemical volatilization from VOCs in the groundwater beneath the Properties is believed to be the source of at least some of the VOCs detected in soil vapor. One of the three surface samples at the El Camino property contained elevated levels of arsenic, lead, and zinc, but these detections were below levels of concern. At the Evergreen property, one of the three samples taken from the drainage channel contained elevated levels of lead, zinc and pesticides. Table 3 summarizes the maximum detected levels of pollutants in comparison to their respective environmental screening levels:
10. As shown in the above table, a comparison of soil data from the Properties with soil screening numbers for residential land use shows that current conditions at the Properties do not present a significant threat to human health. Drinking water is and will be supplied from off-site sources. Based on the evaluation of human health risks via the potential exposure pathways under a residential land use scenario, it is concluded that there is no significant risk posed by the Known Conditions.
11. No active discharge of wastes is currently occurring on the Properties.
12. Signature represents that it is not responsible party for, or affiliated with a responsible party for, the Known Conditions, and the sole interest of Signature in the Properties is to redevelop the Properties for residential uses.
13. By entering into this Agreement, Signature certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to the Water Board any and all information known to it and all information in its possession or control that relates in any way to any existing pollution or any past or potential future release of wastes, hazardous substances, pollutants or contaminants in, at, under, or originating from the Properties, or any portion thereof, and any existing pollution or any past or potential future release of wastes, hazardous substances, pollutants or contaminants originating from adjacent and nearby properties migrating onto or off of the Properties, or any portion thereof.
14. The Properties are not the subject of active enforcement actions or agreement(s) with another agency to address the remediation at the site.
15. Signature agrees to pay for all costs associated with the Water Board's development and oversight of this Agreement.
16. This Agreement is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act (Water Code Division 7) and the federal Clean Water Act.

IV. AGREEMENT

1. Risk Management Measures by Signature: In order to ensure that activities at the Properties, with the exercise of due care, will not aggravate or contribute to the

condition of, pollution due the Known Conditions, this Agreement imposes certain requirements on Signature, as set forth herein, regarding implementation and compliance with risk management measures that will be implemented at the Properties. These risk management measures are as follows:

- a) Installation of Vapor Barriers: To protect future residents from the potential intrusion of VOC vapors from the groundwater into the indoor air of residences, Signature shall include installation of a water/vapor barrier beneath all residential units constructed on the Properties.
- b) Deed Restriction: Signature will record a Deed Restriction on the Properties prohibiting the use of groundwater at and beneath the Properties for all purposes, including, but not limited to, drinking, irrigation, and industrial use.
- c) Removal of Asphalt and Wastes: Signature will remove the asphaltic pavement from the El Camino property and, if found to be present by observation or sampling, further remove soils beneath the pavement polluted with petroleum hydrocarbons or metals that may pose a risk to groundwater or human health.
- d) Pavement over Ditch Soil: Signature will assure that the polluted soils in the storm water drainage ditch on the Evergreen Property will be overlain by a paved street.
- e) Groundwater Monitoring: Signature will install a groundwater monitoring well into the A-aquifer at the El Camino property at a location to be reasonably agreed between Signature and Water Board staff and will permit access to the monitoring well as may be reasonably required for future sampling in connection with evaluation and/or remediation of area-wide groundwater issues. Signature's obligation shall be limited to installing the well, developing the well and performing one round of sampling with analysis for VOC levels in the groundwater. Signature shall have no further obligation for sampling, maintaining, monitoring, destruction or closing of the well. Following installation of the well, Signature and Water Board staff shall discuss transfer of ownership of the monitoring well to an appropriate third party and shall work to accomplish such transfer as soon as practicable. In the event that transfer of ownership of the well is not completed within 18 months following the effective date of this Agreement, then, upon 30 days prior written notice to Regional Board staff, Signature shall have the right to close and/or remove the well in accordance with applicable laws and good engineering practice.

Each of the above-listed risk management measures shall be implemented in accordance with documents, plans, and/or specifications that Water Board staff

has previously reviewed and provided Signature with written concurrence of such documents plans and/or specifications.

2. Covenant Not to Sue: In accordance with Resolution R5-2006-0123 (“Resolution”) authorizing the Water Board’s Executive Officer to execute this Agreement on behalf of the Water Board, the Water Board expressly finds that Signature shall not be liable or otherwise responsible for Known Conditions at or associated with the Properties and hereby covenants and agrees not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against Signature arising out of or related to such Known Conditions under any local, state or federal statute or the common law, including but not limited to, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration, cleanup, containment or maintenance of the Known Conditions except as set forth in this Agreement.
3. Agreement Constitutes a CERCLA Section 113(f)(2) Settlement: Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, Liability and Recovery Act of 1980, 42 U.S.C. Section 9613(f)(2) (“CERCLA”) provides that: “A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement.” Accordingly, the Water Board affirms that this Agreement resolves Signature’s liability to the Water Board with regard to any claims related to the matters included in the Resolution, including all claims regarding the Known Conditions.
4. This Agreement shall not prejudice or otherwise affect in any way the ability of the Water Board to take action against any party other than Signature, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions.
5. Notwithstanding any other provisions of this Agreement, the Water Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceedings against Signature relating to the acts or omissions of Signature arising after the Effective Date and which are based on the failure of the Signature, to the extent it has control over the Properties, to (i) exercise due care at the Properties with respect to the Known Conditions; (ii) implement and comply with the terms of this Agreement; and (iii) cooperate in providing reasonable access to the Properties for remediation and monitoring purposes and construction, maintenance, and repair of any necessary remediation and/or monitoring system required by the Water Board. If the Water Board determines that a Signature has failed to comply with any of these three enumerated requirements, after notice and a reasonable opportunity for cure, and the Water Board elects to proceed against Signature, then this Agreement shall be suspended, and the Water Board and Signature shall then have any rights or defenses they would have had if this Agreement and Covenant Not to Sue had not

existed. If, following such proceeding, the Water Board determines such action to be warranted, it may declare this Agreement to be null and void. This reservation by the Water Board shall be separately and distinctly applied with respect to successors of Signature's ownership of the Properties, the intent being that failure by a successor to Signature to comply with any applicable requirement shall not render the Water Board's covenant inapplicable to any other successors. Nothing contained in this Agreement shall be deemed a waiver of, or a release by, Signature of any defense, cross-claim, counter claim, offset or other rights available to Signature in response to any claim, order, demand, enforcement action or other civil or administrative proceeding by the Water Board, as specifically reserved hereunder

6. The Water Board, by this Agreement, assumes neither liability nor responsibility for any acts performed by Signature in the course of Signature's actions related to the Properties including, but not limited to, purchasing, building, developing, or other activities performed at, or related to the Properties. Signature, on behalf of itself and its respective successors in interest, hereby covenants not to sue the Water Board, its authorized officers, employees or representatives, with respect to any and all liabilities or claims associated with or arising out of the Known Conditions.
7. The Agreement shall not prohibit the Water Board from asserting any claim, enforcement action, or other civil or administrative proceeding related to any condition of pollution at, under, or originating from the Properties prior to the Effective Date that are not Known Conditions. With respect to any claim, cause of action, investigation, or enforcement action asserted or required by the Water Board, Signature shall bear the burden of proving that any conditions of pollution in, at, under, or originating from the Properties, or any portion thereof, and all conditions of pollution originating from adjacent and nearby properties migrating onto or off of the Properties, or any portion thereof, for which the Water Board is pursuing a claim, cause of action, investigation, or enforcement action are Known Conditions.
8. This Agreement shall be in full force and effect from the Effective Date. Signature shall have ninety (90) days from the later of (a) its acquisition of the Properties or (b) adoption of Resolution No. R5-2006-0123, to record the Agreement and Deed Restriction against the Properties, provided that such ninety (90) day period shall be extended by a period of time required by the Executive Officer of the Water Board to fully execute the Agreement and Deed Restriction. A copy of the recorded Agreement and Deed Restriction shall be provided to the Water Board within twenty (20) days of the recording. Signature and the Water Board may extend the deadlines set forth in this paragraph by mutual agreement documented in writing.
9. This Agreement may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single

instrument. The Effective Date of the Agreement shall be the date on which it is fully executed by the parties below.

10. Each of the undersigned parties hereby certifies, and warrants that to the best of his or her knowledge, he or she is authorized to bind his or her agency or entity to the continuing obligations described herein, and that the foregoing is a full, true and correct copy of Proposed Agreement and Covenant Not to Sue, considered by the Water Board in association with Resolution No. R5-2006-0123, adopted by the California Water Quality Control Board, Central Valley Region, on 7 December 2006.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

By: _____
PAMELA C. CREEDON
Executive Officer

Date: _____

SIGNATURE PROPERTIES, INC.

By: _____

Name: _____

Title: _____

Date: _____

Attachments:

Tables 1, 2 and 3

A: Figure Showing Location of the Properties

B: Legal Description of Properties

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Table 1
Soil Gas Investigation Analytical Summary
ENGEO Investigation, Evergreen Property

Compound	No. of Samples	High (µg/m ³)	Median (µg/m ³)	CHHSL (µg/m ³)
Freon 12 (Dichlorodifluoromethane)	3	<3.8	<3.6	N/A
1,3-Butadiene	3	<1.7	<1.6	N/A
Freon 11 (Trichlorofluoromethane)	3	<4.3	<4.1	N/A
Ethanol	3	62	9.0	N/A
Freon 113	3	<5.8	<5.6	N/A
Acetone	3	130	37	N/A
2-Propanol	3	8.9	<7.5	N/A
Carbon Disulfide	3	2.7	<2.4	N/A
Methylene Chloride	3	17	<2.6	N/A
Hexane	3	13	5.0	N/A
2-Butanone (MEK)	3	34	11	N/A
Tetrahydrofuran	3	<2.2	<2.2	N/A
Chloroform	3	<3.7	<3.6	N/A
2,2,4-Trimethylpentane	3	<3.6	<3.4	N/A
Benzene	3	10	4.5	36.2
Heptane	3	6.6	<3.1	N/A
4-Methyl-2-pentanone	3	3.2	<3.0	N/A
Toluene	3	36	25	135,000
Tetrachloroethene (PCE)	3	<5.2	<5.0	180
Ethyl Benzene	3	6.8	5.6	N/A
Xylenes	3	34	34	632,000
4-Ethyltoluene	3	15	14	N/A
1,3,5-Trimethylbenzene	3	4.4	4.4	N/A
1,2,4-Trimethylbenzene	3	20	18	N/A
Notes: N/A: not applicable.				

Table 2
Surface Soil Sample Analytical Summary
BSK Investigation, El Camino and Evergreen Properties

Compound	El Camino Property			Evergreen Property		
	No. of Samples	High (mg/kg)	Median (mg/kg)	No. of Samples	High (mg/kg)	Median (mg/kg)
CAM-17 Metals						
Antimony (Sb)	3	<10	<10	5	<10	<10
Arsenic (As)	3	14	6.9	5	3.6	2.5
Barium (Ba)	3	98	79	5	140	120
Beryllium (Be)	3	<1	<1	5	<1	<1
Cadmium (Cd)	3	1.0	<1	5	<1	<1
Total Chromium (Cr)	3	29	23	5	26	25
Cobalt (Co)	3	8.6	8.4	5	8.5	8.4
Copper (Cu)	3	35	28	5	20	17
Lead (Pb)	3	150	83	5	130	30
Mercury (Hg)	3	<0.1	<0.1	5	0.18	<0.1
Molybdenum (Mo)	3	<5	<5	5	<5	<5
Nickel (Ni)	3	24	24	5	21	20
Total Selenium (Se)	3	<1	<1	5	<1	<1
Silver (Ag)	3	<2	<2	5	<2	<2
Thallium (Tl)	3	<2	<2	5	<2	<2
Vanadium (V)	3	35	30	5	40	36
Zinc (Zn)	3	250	130	5	98	74
Organochlorine Pesticides						
Chlordane	3	<0.05	<0.05	5	0.19	0.08
Dieldrin	3	<0.02	<0.02	5	<0.02	<0.02
Heptachlor epoxide	3	<0.05	<0.05	5	<0.05	<0.05
Notes:						
<: Not detected above laboratory's indicated detection Limit for Reporting (DLR).						

Table 3
Soil Gas Investigation Analytical Summary – CPT Borings
BSK Investigation, El Camino and Evergreen Properties

Compound	El Camino Property			Evergreen Property			CHHSL
	No. of Samples	High (µg/m ³)	Median (µg/m ³)	No. of Samples	High (µg/m ³)	Median (µg/m ³)	
Freon 12 (Dichlorodiflouromethane)	3	6.4	<4.4	4	6.2	<3.9	N/A
1,3-Butadiene	3	<2.0	<1.8	4	18	10	N/A
Freon 11 (Trichloroflouromethane)	3	9.9	<5.0	4	<4.6	<4.4	N/A
Ethanol	3	9.9	7.6	4	<6.2	<5.7	N/A
Freon 113	3	11	7.4	4	31	<6.3	N/A
Acetone	3	450	220	4	350	260	N/A
2-Propanol	3	29	<8.2	4	31	<7.9	N/A
Carbon Disulfide	3	13	4.7	4	3.7	<2.6	N/A
Methylene Chloride	3	<3.1	<2.9	4	<2.8	<2.7	N/A
Hexane	3	4.7	4.0	4	6.2	<2.8	N/A
2-Butanone (MEK)	3	20	17	4	18	10	N/A
Tetrahydrofuran	3	3.1	<2.5	4	<2.4	<2.3	N/A
Chloroform	3	4.7	<4.4	4	<4.0	<3.9	N/A
2,2,4-Trimethylpentane	3	5.6	<3.9	4	4.1	3.8	N/A
Benzene	3	3.4	3.0	4	7.6	3.6	36.2
Heptane	3	5.8	<3.4	4	4.1	3.4	N/A
4-Methyl-2-pentanone	3	<3.7	<3.4	4	<3.4	<3.3	N/A
Toluene	3	16	8.6	4	15	11	135,000
Tetrachloroethene (PCE)	3	53	<5.7	4	36	7.2	180
Ethyl Benzene	3	13	8.2	4	11	9.2	N/A
Xylenes	3	73	43	4	62	53	632,000
4-Ethyltoluene	3	5.2	<4.1	4	6.7	4.1	N/A
1,3,5-Trimethylbenzene	3	<4.4	<4.1	4	<4.0	<3.8	N/A
1,2,4-Trimethylbenzene	3	7.2	4.6	4	9.1	5.1	N/A
Notes: <: Not detected above laboratory's indicated detection Limit for Reporting (DLR). NA = No CHHSL listed							